

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Telephone Number Portability

CC Docket No. 95-116

Petition of SBC Communications
Inc. For Forbearance Under 47
U.S.C. § 160(c) From the
Application of the Five-Year
Recovery Period for Local Number
Portability Costs Under 47
C.F.R. § 52.33(a)(1)

Petition of SBC Communications
Inc. for Waiver of the Five-Year
Recovery Period for Local Number
Portability Costs Under 47 C.F.R.
§ 52.33(a)(1)

CC Docket No. 95-116

**REPLY COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA
TO PETITIONS OF SBC FOR FORBEARANCE AND FOR WAIVER**

The California Public Utilities Commission (California or the CPUC) and the People of the State of California submit these reply comments in response to two petitions filed by SBC Communications (SBC) on February 8, 2005 with the Federal Communications Commission (FCC or Commission). SBC's Petition for Forbearance asks the FCC to forbear from enforcing "its rule limiting SBC's ability

to recover its costs from implementing local number portability ('LNP') to a five-year period". SBC's Petition for Waiver requests, in the alternative, that the FCC grant SBC a waiver of the Commission's rule limiting SBC to a five-year recovery period for LNP costs. In both petitions, SBC asserts that it wishes to continue to assess end-user charges "for a limited time until SBC has fully recovered the total amount of LNP costs that the Commission has authorized it to collect".

The CPUC filed a Response to the SBC Petitions on March 24, 2005. In that Response, the CPUC stated that it could not support either SBC petition at that time because SBC had failed to provide data to the CPUC to justify the company's requests. Following up on an original data request the CPUC sent to SBC on March 15, 2005, the CPUC sent two additional data requests to SBC, on March 23rd and March 28th. Both data requests sought additional information in order to determine whether the relief SBC sought in its petitions was reasonable.

SBC responded to the March 23rd data request promptly, but the CPUC did not receive the response to the March 28th data request until April 6th. The CPUC staff review of the data provided has raised still further questions, which cannot be resolved given the short period between SBC's response and the due date for these Reply Comments.

In addition, CPUC staff found flaws and errors in the data provided on April 6th. To assist the FCC in understanding the focus of the CPUC's inquiry, all three data requests are appended to this pleading. Also appended is a brief CPUC analysis of SBC's responses, showing where the responses were adequate and where questions remain.¹

In addition to the absence of supporting data, the CPUC is concerned about SBC's representation that it declined to collect approximately \$37 million from "contract customers". Contract customers are business customers, and it appears from that SBC decided to absorb the LNP costs that would have been assessed against those business customers. SBC apparently did not decide to absorb the \$41 million in estimated LNP costs it claims it did not collect from non-contract customers. That fact alone raises concerns for the CPUC, but the absence of supporting data raises an additional question: whether SBC's estimated \$37 million in LNP costs uncollected from contract customers is an accurate number. It may be that supporting calculations would show that SBC should have collected considerably more from contract customers, while the amount "undercollected" from

¹ Because SBC submitted the response to the CPUC as proprietary, a copy of that response is not appended to these comments

residential customers could be much less than the estimated \$41 million SBC included in its petitions.²

Finally, the CPUC notes SBC's claim in its response that the number of access lines associated with local exchange customers, line side access customers, and resale customers is "irrelevant" to the issues raised in its petitions. This is a curious stance, since in its petitions, SBC asserts "[a]fter two years of continued growth . . . SBC's access lines began declining for the first time in seventy years".³ Since the company had to estimate growth in access lines, each of these categories of access lines could easily have experienced different growth rates. Consequently, the number of actual local exchange access, line side access, and resale access lines seems quite relevant to the issues raised in SBC's petitions.

I. RESPONSE TO OTHER COMMENTERS

The CPUC concurs with the comments of the Association for Communications Technology Professional in Higher Education (ACUTA, Inc.). ACUTA notes that the FCC made a commitment to consumers of telecommunications services that LNP cost recovery

² See Petitions, Declaration of John G. Connelly, ¶ 11.

³ Petitions, p. 3.

would be limited to a five-year period. Granting SBC's petition would abrogate that commitment. In addition, ACUTA notes that the five-year cost recovery period was established on the premise that the carriers would be reimbursed for the cost of upgrades and modifications in that period. After the five years, ACUTA asserts, the maintenance cost of LNP functions should have become a routine part of doing business. SBC has not included in its petitions documentation showing that it has not recovered its upgrade costs. The CPUC finds these arguments worth scrutiny by the FCC.

II. CONCLUSION

For the reasons cited here and in its March 24th Response, the CPUC cannot support SBC's petitions for forbearance and for waiver, respectively. Again, the CPUC strongly urges the FCC to request from SBC data underlying SBC's contention that it has failed to recover LNP costs because of a decline in its number of access lines.

Respectfully submitted,

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